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REMARKS

The comments of the applicant below are each preceded by related comments of the examiner (in small, bold type).

Claims 21-25, 46-50, 59-61 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Applicant has claimed a computer-readable medium with no support in the specification for such terminology. In current practive office has seen use of transmission media for example carrier waves as being define as a computer-readable medium. By current office practices and interim guidelines as provided below, transmission media are deemed non-statutory under 35 USC 101 ...

Claim 21 has been amended to recite a "tangible" computer-readable medium. Claim 21 and its dependent claims are thus patentable under 35 U.S.C. §101.

Claims 1, 11, and 21 are rejected under 35 U.S.C. 112, First paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails to teach "filtering out selected records from the server log" as claimed.

Support for the limitation "filtering out selected records from the server log" can be found in the applicant's specification at least at the passage on page 8, lines 22 to page 9, line 5, which is reproduced below for the examiner's convenience:

> If filtration parameters are set in the process settings step 202, the data in the server log file 200 is filtered to remove records that are not to be counted in further statistical analyses. For example, such records may be from non-customer sources, such as a beacon or agent, and thus do not reflect actual user accesses to the web server 110. In the illustrated embodiment, an agent ID field within a conventional W3C compliant server log file is used to filter out undesirable records.

Accordingly, the applicant considers independent claims 1, 11, and 21 to conform to the requirements of 35 U.S.C. §112, first paragraph.

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Claims 1-5, 11-15 ,21 -25, 3 1 -38, 40-44, 46-49, 51, 54, 55, 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haggard et al. in view of USPN 6,317,787 issued to Boyd et al. in further view of Network Working Group Request for Comments: 1739 submitted by Kessler et al.

(Amended) Regarding claims 1, 11, and 21, Haggard et al. teach a method (claim 1), a system (claim 11), and a computer program (claim 21) for real-time measurement of the performance of communications on a large area network between a selected server and a plurality of users at client machines, based upon actual user experience, including accessing a server log having records of actual user access to the selected server (Abstract); aggregating records from the server log into a database (col. 7, lines 22-44); performing at least one statistical analysis of each time bin on each aggregate slot (col. 7, lines 22-44); and outputting the results of such statistical analysis as an indication of actual usage by users (Abstract; col. 2, lines 51-67 - col. 3, lines 1-6; col. 7, lines 23-44; figure 5).

However, Haggard et al. fail to explicitly teach: accessing a server log having records indicative of routings through nodes of the network of actual user access to the selected server, wherein at least one of the nodes is part of a communication path connecting one of the client machines to the selected server; filtering out selected records from the server log; and aggregating records from the server log into a plurality of aggregate slots, each slot having at least one time bin which represents an interval of time, based on an aggregation method; and performing at least one statistical analysis separately of each time bin on each aggregate slot. Kessler et al. teach accessing a server log having records indicative of routings through nodes of the network of actual user access to the selected server, wherein at least one of the nodes is part of a communication path connecting one of the client machines to the selected server and outputting the access-to-server result (Section 2.2 PING, and Section 2.4 TRACEROUTE).

Boyd et al. teach: aggregating records from the server log into a plurality of aggregate slots, each slot having at least one time bin which represents an interval of time, based on an aggregation method (figure 5; col. 1, lines 27-35; col. 2, lines 5-11; col. 3, lines 47-59; col. 8, lines 37-42); filtering out selected records from the server log (figures 6 and 7, no. 64); and performing at least one statistical analysis separately of each time bin on each aggregate slot (col. 3, lines 47-59; col. 4, lines 10-25).

At the time the invention was made, it would have been obvious to one of ordinary skill
in the art to access a server log having records indicative of routings through the network of actual user access in order to calculate and monitor throughput of the network, and aggregate records into a plurality of aggregate slots having time bin and analyzing the slots separately in order to identify trends, statistics and other information regarding traffic data (Boyd, col. 4, lines 18-20), therefore, facilitating in analyzing user's experience on the network.

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The applicant respectfully disagrees. Boyd neither discloses nor suggests filtering out selected records from the server log as recited in claim 1. Rather, in FIGS. 6-8 and accompanying text in col. 6, line 57 to col. 8, line 7, Boyd describes sorting hits to provide a chronological listing of hits according to the time that the hits were generated. For example, the passage at col. 6, lines 57-60, which is reproduced below for reference, does not mention filtering out selected hits from received hits:

> Turning now to FIG. 6, included therein is a sorter 64, which examines the hits in sequence in each of the log files and passes them – in the chronological order in which each hit was generated – to a log file analyzer 66.

Sorting is not the same as filtering. Nowhere, does Boyd disclose or suggest filtering out selected hits from the server log.

> **Regarding claims 2, 12, and 22 ...**
> **Regarding claims 3, 13, and 23 ...**
> **Regarding claims 4, 14, and 24 ...**
> **Regarding claims 5, 15, and 25 ...**
> **Regarding claim 31 ...**
> **Regarding claims 32, 40, and 46 ...**
> **Regarding claims 33 and 41 ...**
> **Regarding claims 34, 42 and 47 ...**
> **Regarding claim 35 ...**
> **Regarding claim 36 ...**
> **Regarding claims 37, 43 and 48 ...**
> **Regarding claims 38, 44 and 49 ...**
> **Regarding claims 51, 55, and 59 ...**
> **Regarding claims 54 and 58 ...**
> **Claims 39, 45 50, 53, 57 and 61 ...**
>
> **Response to Arguments**
> **Applicant's arguments have been considered but they are not found persuasive.**
> **Applicant has amended independent claims to recite: "filtering out selected records from the server log" as previously recited in dependent claims 2, 12 and 22. The amendment has not been considered because this limitation is not taught in the specification. Applicant is hereby requested to point out exactly where this is being taught in the reply to this action in order to further advance prosecution of this application ...**

As shown above, the applicant has pointed the examiner to passages in the specification that teach "filtering out selected records from the server log". The applicant reasons that the examiner may have overlooked these passages during examination. Given that the examiner has

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not considered the applicant's amendments from the previous reply, the applicant respectfully requests that either non-final action or a notice of allowance be provided pending further search and/or consideration of the applicant's amendments.

Independent claims 11 and 21 are patentable for at least the reasons for which claim 1 is patentable. All of the dependent claims are patentable for at least the reasons for which the claims on which they depend are patentable.

Canceled claims, if any, have been canceled without prejudice or disclaimer.

Any circumstance in which the applicant has (a) addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

While no fees are believed due at this time, please apply any charge deficiencies or credits to deposit account 06-1050, reference 10559-096001.

Respectfully submitted,

Date:_____9/11/6_____

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